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A Delaware Limited Liability Partnership

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
(Camden Vicinage)**

Jeffrey Bowman and Laurie Bowman,
403 New Jersey Road,
Brown Mills, NJ 08015

Plaintiffs,

v.

Wells Fargo Bank, N.A.,
Wells Fargo Center
Sixth Street & Marquette Avenue
Minneapolis, MN 55479

and

American Bankers Insurance Company of
Florida,
11222 Quail Roost Drive
Miami, FL 33157-6543

Defendants.

ELECTRONICALLY FILED

CIVIL ACTION NO.
1:10-CV-02912-NLH-JS

**ANSWER AND SEPARATE DEFENSES OF DEFENDANT
AMERICAN BANKERS INSURANCE COMPANY TO PLAINTIFFS' CIVIL
ACTION COMPLAINT AND TO FIRST AMENDED CIVIL ACTION
COMPLAINT**

Defendant American Bankers Insurance Company ("American Bankers"), by and through the undersigned counsel, hereby responds to the numbered paragraphs of

Plaintiffs' "Civil Action Complaint" and to Plaintiffs' "First Amended Civil Action Complaint" (collectively referred to herein as the "Complaints"),¹ as follows:

I. Jurisdictions and Venue

1. The allegations contained in Paragraph 1 of Plaintiffs' Complaints do not appear directed at American Bankers and American Bankers is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of Plaintiffs' Complaints, which therefore stand denied.

II. The Parties

2. The allegations contained in Paragraph 2 of Plaintiffs' Complaints do not appear directed at American Bankers and American Bankers is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of Plaintiffs' Complaints, which therefore stand denied.

3. The allegations contained in Paragraph 3 of Plaintiffs' Complaints do not appear directed at American Bankers and American Bankers is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of Plaintiffs' Complaints, which therefore stand denied.

4. American Bankers admits the allegations in Paragraph 4 of Plaintiffs' Complaints but denies any and all liability to Plaintiffs.

5. The allegations contained in Paragraph 5 of Plaintiffs' Complaints do not appear directed at American Bankers and American Bankers is without knowledge or

¹ American Bankers shows that it is answering and asserting defenses to both Plaintiffs' "Civil Action Complaint" and also Plaintiffs' "First Amended Civil Action Complaint." American Bankers notes that Plaintiffs' "First Amended Civil Action Complaint" has not been served upon American Bankers but out of an abundance of caution American

information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of Plaintiffs' Complaints, which therefore stand denied.

6. American Bankers denies the allegations in Paragraph 6 of Plaintiffs' Complaints.

III. Operative Facts

7. The allegations contained in Paragraph 7 of Plaintiffs' Complaints do not appear directed at American Bankers and American Bankers is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of Plaintiffs' Complaints, which therefore stand denied. American Bankers admits, upon information and belief, that Plaintiffs applied for one or more accounts or lines of credit with Wells Fargo. Any such agreement with Wells Fargo speaks for itself, is defined by the express terms and conditions set forth therein and such document is best evidence of its contents.

8. The allegations contained in Paragraph 8 of Plaintiffs' Complaints do not appear directed at American Bankers and American Bankers is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of Plaintiffs' Complaints, which therefore stand denied.

9. The allegations contained in Paragraph 9 of Plaintiffs' Complaints do not appear directed at American Bankers and American Bankers is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of Plaintiffs' Complaints, which therefore stand denied.

Bankers is answering it as well as the Complaint, including under authority of Federal Rule of Civil Procedure 15(a)(3).

10. The allegations contained in Paragraph 10 of Plaintiffs' Complaints do not appear directed at American Bankers and American Bankers is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 of Plaintiffs' Complaints, which therefore stand denied.

11. The allegations contained in Paragraph 11 of Plaintiffs' Complaints do not appear directed at American Bankers and American Bankers is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 of Plaintiffs' Complaints, which therefore stand denied.

12. The allegations contained in Paragraph 12 of Plaintiffs' Complaints do not appear directed at American Bankers and American Bankers is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of Plaintiffs' Complaints, which therefore stand denied.

13. American Bankers denies the allegations in Paragraph 13 of Plaintiffs' Complaints. Any policy of insurance between American Bankers and one or both Plaintiffs speaks for itself, is defined by the express terms and conditions set forth therein and such document is best evidence of its contents.

14. American Bankers denies the allegations in Paragraph 14 of Plaintiffs' Complaints. Any policy of insurance between American Bankers and one or both Plaintiffs speaks for itself, is defined by the express terms and conditions set forth therein and such document is best evidence of its contents.

15. American Bankers is without knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 15 of Plaintiffs' Complaints and American Bankers is without knowledge sufficient to form a belief as to the truth of the allegations

in Paragraph 15 of Plaintiffs' Complaints, which therefore stand denied. Any policy of insurance between American Bankers and one or both Plaintiffs speaks for itself, is defined by the express terms and conditions set forth therein and such document is best evidence of its contents.

16. American Bankers is without knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 16 of Plaintiffs' Complaints and American Bankers is without knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 16 of Plaintiffs' Complaints, which therefore stand denied.

17. American Bankers denies the allegations contained in Paragraph 17 of Plaintiffs' Complaints.

18. The allegations contained in Paragraph 18 of Plaintiffs' Complaints do not appear directed at American Bankers and American Bankers is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of Plaintiffs' Complaints, which therefore stand denied.

19. The allegations contained in Paragraph 19 of Plaintiffs' Complaints do not appear directed at American Bankers and American Bankers is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of Plaintiffs' Complaints, which therefore stand denied.

20. The allegations contained in Paragraph 20 of Plaintiffs' Complaints do not appear directed at American Bankers and American Bankers is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of Plaintiffs' Complaints, which therefore stand denied.

21. The allegations contained in Paragraph 21 of Plaintiffs' Complaints do not appear directed at American Bankers and American Bankers is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 of Plaintiffs' Complaints, which therefore stand denied.

22. American Bankers is without knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 21 of Plaintiffs' Complaints, which therefore stand denied.

23. Defendant American Bankers denies the allegations contained in Paragraph 23 of Plaintiffs' Complaints.

24. The allegations contained in Paragraph 24 of Plaintiffs' Complaints do not appear directed at American Bankers and American Bankers is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 of Plaintiffs' Complaints, which therefore stand denied.

25. The allegations contained in Paragraph 25 of Plaintiffs' Complaints do not appear directed at American Bankers and American Bankers is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 of Plaintiffs' Complaints, which therefore stand denied.

26. Defendant American Bankers is without knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 26 of Plaintiffs' Complaints, which therefore stand denied.

Count I

Fraud Act (CFA)

27. The allegations in Paragraph 27 of Plaintiffs' Complaints are legal conclusions requiring no response and American Bankers is without knowledge sufficient

to form a belief as to the truth of the allegations in Paragraph 27 of Plaintiffs'

Complaints, which therefore stand denied.

28. American Bankers denies the allegations contained in Paragraph 28 of Plaintiffs' Complaints.

29. American Bankers denies the allegations contained in Paragraph 29 of Plaintiffs' Complaints.

30. American Bankers denies the allegations contained in Paragraph 30 of Plaintiffs' Complaints.

31. American Bankers denies any allegations of Plaintiffs' Complaints not expressly admitted to or otherwise responded to herein.

WHEREFORE, Defendant American Bankers prays:

- (a) That Plaintiffs' Complaints be dismissed with prejudice;
- (b) That judgment be had in favor of American Bankers and against Plaintiffs on their Complaints;
- (c) That American Bankers recover its attorney's fees and expenses of litigation;
- (d) That American Bankers have a trial by jury on all issues so triable;
- (e) That all costs of this action, including reasonable attorney fees, be taxed against Plaintiffs; and
- (f) That American Bankers have such other and further relief as the Court deems just and proper.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

Plaintiffs' Complaints fail to state a claim upon which relief can be granted and should be dismissed with prejudice.

SECOND SEPARATE DEFENSE

Plaintiffs' Complaints are barred in whole or in part due to their failure to comply with all conditions precedent and failure of consideration.

THIRD SEPARATE DEFENSE

Plaintiffs' Complaints are barred in whole or in part by the doctrine of payment.

FOURTH SEPARATE DEFENSE

Plaintiffs' Complaints are barred in whole or in part by accord and satisfaction.

FIFTH SEPARATE DEFENSE

Plaintiffs' Complaints are barred in whole or in part by the independent doctrines of waiver and estoppel.

SIXTH SEPARATE DEFENSE

Plaintiffs' Complaints are barred in whole or in part as against American Bankers because no act or omission by American Bankers caused Plaintiffs' loss, if any, and/or because of the intervening and superceding acts or omissions of other parties.

SEVENTH SEPARATE DEFENSE

Plaintiffs' Complaints are barred in whole or in part by their failure to mitigate their damages, if any.

EIGHTH SEPARATE DEFENSE

Plaintiffs' alleged claim under the Consumer Fraud Act is barred in whole or in part as against American Bankers because Plaintiffs' did not suffer "ascertainable loss"

caused by any intentional act or omission of American Bankers and all essential requisites to recover are absent.

NINTH SEPARATE DEFENSE

Plaintiffs' Complaints are barred based on the independent doctrines of insufficiency of process, insufficiency of service of process and lack of in personam jurisdiction.

TENTH SEPARATE DEFENSE

Plaintiffs' alleged claim under the Consumer Fraud Act is barred in whole or in part due to Plaintiffs' failure to plead fraud with particularity, including without limitation, pleading fraud as required to set forth a claim according to Rules 8 and 12 of the Federal Rules of Civil Procedure.

ELEVENTH SEPARATE DEFENSE

Plaintiffs' Complaints are barred in whole or in part according to the terms and conditions of the insurance for which one or both Plaintiffs allegedly applied, including, without limitation, the provision that states that any co-applicant will only be eligible for Life coverage under such policy.

WHEREFORE, Defendant American Bankers Insurance Company demands judgment in its favor and against Plaintiffs, together with an award of counsel fees and costs incurred in the defense thereof and such further relief as the Court may deem equitable and just.

CERTIFICATION PURSUANT TO LOCAL RULE 11.2

To the best of the undersigned's knowledge, it is hereby certified that the matter in controversy is not the subject of any other pending or contemplated action in any court,

nor is it the subject of any pending or contemplated arbitration or administrative proceeding.

DUANE MORRIS LLP
A Delaware Limited Liability
Partnership
Attorneys for American Bankers
Insurance Company

/s/ Michael W. O'Hara
MICHAEL W. O'HARA

Dated: July 12, 2010